

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TINA WELLS</b>	)	
Claimant	)	
VS.	)	
	)	
<b>U.S.D. 503</b>	)	Docket No. 264,213
Respondent	)	
AND	)	
	)	
<b>KANSAS ASSOCIATION OF SCHOOL BOARDS</b>	)	
<b>RISK MANAGEMENT</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the November 1, 2002 Award of the Administrative Law Judge Jon L. Frobish. Claimant was awarded a 20 percent impairment to the right lower extremity for injuries suffered to her right knee on April 15, 1998.<sup>1</sup> Respondent contends that claimant's 20 percent impairment rating should be reduced by the 10 percent functional impairment which was found to be preexisting by claimant's treating physician, orthopedic surgeon William L. Dillon, M.D. The Appeals Board (Board) placed this case on its summary docket for decision without oral argument.

**APPEARANCES**

Claimant appeared by her attorney, Carlton W. Kennard of Pittsburg, Kansas. Respondent and its insurance carrier appeared by their attorney, Anton C. Andersen of Kansas City, Kansas.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

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<sup>1</sup> K.S.A. 1997 Supp. 44-510d(a)(16).

**ISSUES**

What is the nature and extent of claimant's injury? Particularly, is respondent entitled to a reduction of claimant's functional impairment due to the preexisting injuries to claimant's right knee pursuant to K.S.A. 1997 Supp. 44-501(c)?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, the Board finds that the Award of the Administrative Law Judge should be reduced to a 10 percent impairment to the right lower extremity after deducting the 10 percent preexisting functional impairment from claimant's prior injuries to her right knee.

Claimant, a teacher's aide with U.S.D. 503, slipped on a wet floor, injuring her right knee on April 15, 1998. Claimant experienced immediate pain and was referred to orthopedic surgeon William L. Dillon, M.D.

Claimant had been a patient of Dr. Dillon's since 1982. Dr. Dillon first treated claimant for her right knee problems in 1989, when claimant injured her knee jumping off a bed. Claimant was treated with pain medication and an arthroscopy was recommended. However, claimant refused. Claimant returned to Dr. Dillon in January 1991, again with pain in her right knee. Dr. Dillon treated her with Motrin and Darvocet. She obtained a refill of the Darvocet prescription in March of 1991, with Dr. Dillon next examining her on April 2, 1991. The right knee arthroscopy was again scheduled for May 15, 1991, but claimant again backed out. Dr. Dillon stated that claimant was afraid of surgery. Dr. Dillon described claimant as someone who does not like doctors and only seeks treatment if she absolutely has no choice.

On May 12, 1998, claimant again returned to Dr. Dillon, who diagnosed claimant with chondromalacia and a possible tear of the medial meniscus. She was treated with pain medication and an arthroscopic examination was again recommended. The internal examination of claimant's knee was scheduled for June 22, 1998. At this time, claimant agreed to the arthroscopic examination, and Dr. Dillon completed the procedure, shaving the articular cartilage and performing a partial lateral meniscectomy. The procedure went without complication, and claimant ultimately returned to her employment as a teacher's aide. Dr. Dillon rated claimant's knee, pursuant to the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.), at 20 percent to the extremity. He further testified pursuant to the AMA *Guides*, claimant had a 10 percent impairment from the 1991 injury. He did acknowledge that he did not rate claimant in 1991, as no one asked him to. However, he testified had someone asked him, the 1991 rating would have been 10 percent to the right lower extremity.

Claimant was referred by her attorney to orthopedic surgeon Edward J. Prostic, M.D., for an examination on June 19, 2001. At that time, Dr. Prostic was provided a history from claimant, denying any prior difficulties with her right knee. Claimant, who was described as being 5'2", weighing 250 pounds, was diagnosed with medial joint space narrowing and arthritic osteoarthritis of the knee. Dr. Prostic also rated claimant at 20 percent to the lower extremity pursuant to the *AMA Guides* (4th ed.), but provided no opinion regarding what, if any, preexisting impairment claimant suffered. On cross-examination, Dr. Prostic was asked to review Dr. Dillon's records from 1982 through the year 2000. Dr. Dillon's records clearly indicated claimant had ongoing right knee problems beginning in 1989, including swelling and crepitus. Dr. Prostic had testified that no portion of claimant's functional impairment preexisted the April 15, 1998 date of accident, as claimant was not complaining and, according to Dr. Prostic's records, claimant sought no medical treatment for her right knee prior to 1998. Dr. Prostic admitted that if the history provided to him was wrong, then his opinion on preexisting impairment might also be wrong.

A review of Dr. Dillon's records indicates that claimant returned to Dr. Dillon in 1993 to obtain Lodine. Lodine was the pain killer that claimant was prescribed for her knee. This indicated that claimant was having ongoing problems with her knee, but was simply reluctant to return for treatment.

K.S.A. 1997 Supp. 44-501(c) states:

The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

The record consists of two medical opinions regarding claimant's functional impairment and what, if any, preexisting impairment she may have suffered from the 1989 through 1991 incidents. The opinion of Dr. Dillon, the treating physician during both periods, is the more credible of the two. The Board finds it significant that the history provided by claimant to Dr. Prostic indicated no prior difficulties with her right knee. This history was clearly in error. Additionally, the Board notes Dr. Dillon's entire medical file had been provided to Dr. Prostic prior to the deposition. For whatever reason, Dr. Prostic failed to note claimant's knee problems from 1989 through 1991.

The Board, therefore, considers Dr. Dillon's opinion to be the more credible medical opinion and adopts same for purposes of this award. The Board finds, pursuant to K.S.A. 1997 Supp. 44-501(c), claimant had a preexisting functional impairment of 10 percent to the knee and reduces claimant's award of 20 percent to the lower extremity to the 10 percent impairment to the lower extremity for the accident of April 15, 1998.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of the Administrative Law Judge is modified and an award is hereby made in favor of the claimant, Tina Wells, and against the respondent, U.S.D. 503, and its insurance carrier, the Kansas Association of School Boards Risk Management, for injuries suffered on April 15, 1998, for a 10 percent permanent partial disability to the right lower extremity.

Claimant is entitled to 2.57 weeks temporary total disability compensation at the rate of \$127.51 per week totaling \$327.70, followed by 19.743 weeks permanent partial disability compensation at the rate of \$127.51 per week in the amount of \$2,517.43, for an award representing a 10 percent permanent partial disability to the right knee.

As of the date of this award, the entire amount is due and owing and ordered paid in one lump sum minus any amounts previously paid.

The Award of the Administrative Law Judge is affirmed in all other regards insofar as it does not contradict the findings and conclusions contained herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Carlton W. Kennard, Attorney for Claimant  
Anton C. Andersen, Attorney for Respondent  
Jon L. Frobish, Administrative Law Judge  
Director, Division of Workers Compensation